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FEDERAL COMMUNICATIONS COMMISSION  
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BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, DC 20554

In the Matter of	)	
	)	
Amendment of Section 73.202(b)	)	MM Docket No. 98-112
Table of Allotments	)	RM - 9027
FM Broadcast Stations	)	RM - 9268
(Anniston and Ashland, Alabama	)	RM - 9384
College Park, Covington,	)	
Milledgeville and Social Circle, Georgia)	)	

To: Chief, Allocations Branch  
Policy and Rules Division  
Mass Media Bureau

**REPLY COMMENTS**

WNNX License Investment Co. ("WNNX"), licensee of Station WHMA(FM), Anniston, Alabama, hereby submits its Reply Comments concerning the Comments and Counterproposal ("Counterproposal") filed by Preston W. Small ("Small") in this rule making proceeding.<sup>1</sup> In support hereof, WNNX states as follows:

1. Small argues that his counterproposal to reallocate Channel 264 from Milledgeville, Georgia to Social Circle, Georgia should be preferred over WNNX's proposal to reallocate Channel 263 from Anniston, Alabama to College Park, Georgia.<sup>2</sup> WNNX respectfully disagrees. Commission

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1. Small's August 31, 1998 Counterproposal appeared on the Commission's November 3, 1998 Public Notice (Report No. 2304), wherein the Commission accepted Small's Counterproposal for consideration herein. Interested parties were afforded fifteen days from the date of the Public Notice to file Reply Comments. Thus, these Reply Comments are timely filed.
  2. In his Petition for Rule Making in this proceeding, Small had proposed to reallocate the Milledgeville, Georgia allocation to Covington, Georgia. Small decided to change his proposal to specify Social Circle instead of Covington ostensibly so that he could seek credit in a comparative analysis for providing first local service. Small's actions reveal the
- (continued...)

case law interpreting the *Revision of FM Assignment Policies and Procedures*, 90 FCC 2d 88 (1982) (“FM Allotment Policy”), supports a finding that the reallocation of Channel 263 from Anniston, Alabama to College Park, Georgia would result in the most preferential arrangement of allotments.<sup>3</sup>

## ANALYSIS

2. The College Park proposal advanced by WNNX and the Social Circle proposal advanced by Small are mutually exclusive. Both proposals would provide first local service to their respective communities of license. Under the FM Allotment Policy, each proposal would receive credit for advancing Priority 3 (*i.e.*, providing first local service to a community).<sup>4</sup> To resolve this case then, the two proposals must be analyzed under Priority 4, other public interest factors.

3. In cases where both proposals receive Priority 3 credit, the relative size of the respective communities is the decisive factor under Priority 4. *Rose Hill, Trenton, Aurora, and Ocracoke, North Carolina*, 11 FCC Rcd 21223 (1996). In *Rose Hill*, proposed allotments to Renton and Aurora, North Carolina were mutually exclusive and both provided first local service to their respective communities for Priority 3 credit. Citing the fact that Aurora was more than twice as populous as Trenton, the Commission concluded that “...in conformance with Commission

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2. (...continued)  
hypocrisy in his accusation that College Park was a “city shopping” choice by WNNX following a decision in the Sandy Springs case. See Counterproposal at p.6.
  3. The allotment to College Park would be for a Class C3 facility.
  4. The Counterproposal argued that College Park was not sufficiently independent from the city of Atlanta to avoid having all of Atlanta’s aural services attributed to it. If Small’s assertion were correct, WNNX’s proposal would not advance Priority 3. In its September 15, 1998 Reply Comments, WNNX overwhelmingly demonstrated that, under the criteria set forth in *Faye and Richard Tuck*, 3 FCC Rcd 5374, 5378 (1988), College Park is an independent community, fully deserving of its own first local transmission service. Therefore, both the College Park and Social Circle proposals receive credit under Priority 3, and the analysis moves to Priority 4.

precedent, we will grant the allotment of Channel 283A to Aurora as it is the larger of the two communities.” *Rose Hill, supra*, citing, *Athens and Atlanta, Illinois*, 11 FCC Rcd 3445 (1996) and *Blanchard, Louisiana and Stephens, Arkansas*, 8 FCC Rcd 7083 (1993).

4. The 1990 U.S. Census reported that College Park, Georgia had a population of 20,457, while the population of Social Circle was 2,755. Without any further examination, as between a new allotment to College Park or a new allotment to Social Circle, the preferred community is College Park, since College Park has nearly eight times the population of Social Circle. The huge difference in size between the two communities alone is sufficient for the Commission to reach its decision. However, the case for College Park is even more compelling because other public interest factors favor an allotment to College Park over an allotment to Social Circle.

5. The College Park proposal prevails in a comparison of net gain area. The College Park proposal will provide a net gain population of 1,691,114, while the Social Circle proposal would produce a net gain population of less than 10% of that figure.<sup>5</sup>

6. Adopting the WNNX proposal will also eliminate a 57.1 km grandfathered short spacing with WUSY at Cleveland, Tennessee and a 1.8 km short spacing with WVNA-FM, Tuscumbia, Alabama. The allocation to Social Circle cannot claim those public interest benefits.<sup>6</sup>

7. Despite the fact that the public interest factors weigh heavily in WNNX’s favor, Small urges the Commission to ignore these public interest factors and instead focus only on the loss

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5. All of the gain area in both proposals is already adequately served (*i.e.*, more than five aural reception services available).

6. In fact, Small’s proposed reallocation from Milledgeville, which has a larger population than Social Circle, would remove that community’s second local service (first competitive service).

area created by the reallocation from Anniston to College Park. The loss area that will be created is decisionally insignificant and certainly will not outweigh the other public interest factors which favor adoption of WNNX's proposal over the Small proposal.

8. In addition to the reallocation of Channel 263C3 from Anniston to College Park, WNNX also proposed the allotment of Channel 261C3 to Anniston to replace the signal that would be moved to College Park and the allotment of Channel 264A to Ashland, Alabama. Without considering the coverage area of the new Anniston and Ashland allotments, the reallocation of Channel 263 from Anniston to College Park would create a gray area (one reception service) to 34 people. There would also be 5,302 people who would receive two aural services. The remaining 614,110 in the loss area created by the reallocation would continue to receive five or more aural services. In analyzing loss areas, the Commission has considered the coverage of the proposed new allotments in reducing or eliminating the loss area for purposes of a Priority 4 analysis. *Llano and Marble Falls, Texas*, 12 FCC Rcd 6809 (1997). When the coverage area of new allotment to Anniston at the proposed reference coordinates is factored in, the small gray area is eliminated and the number of people receiving two aural services is reduced from 5,302 to just 696. Thus, the loss area is far less significant than Small would have the Commission believe.

9. Small's proposal does not create any underserved areas within his loss area, and he argues that the fact that the WNNX proposal creates an underserved area should be sufficient for the Commission to favor Small's proposal under Priority 4. That argument lacks merit. Commission precedent allows consideration of the replacement allotment proposed to Anniston in assessing whether any underserved areas will be created and in any event supports a more balanced approach in comparing conflicting proposals under Priority 4.

10. In *Llano, supra*, the licensee of KBAE, Llano, Texas proposed a change in its community of license from Llano to Marble Falls, Texas as its first local service. The reallocation from Llano would have removed Llano's only local aural service. Thus, the comparison was between a first local service to Marble Falls and a first local service to Llano. To reduce the loss area, KBAE proposed allotting Channel 242A to Llano, and stated its intention to apply for and construct that facility if its proposal was adopted. The Commission then had to decide which represented the most preferential arrangement of allotments - - leaving the channel at Llano or reallocating the Llano facility to Marble Falls and creating a new allotment in Llano, Channel 242A.

11. Even though KBAE's proposal would have removed a first local service from Llano and created an underserved area, specifically a gray area of 35 persons, the Commission still preferred a first local service at Marble Falls rather than leaving the channel at Llano. The decision first recognized that both arrangements were deserving of Priority 3 credit. Under Priority 4, the allotment to Marble Falls and new allotment for Llano was preferred for three reasons. First, the reallocation to Marble Falls would ensure that the community with the larger population received first local service. The 1990 U.S. Census reported that the population of Marble Falls was 4,007 while the population of Llano was 2,962.<sup>7</sup> Second, the reallocation from Llano to Marble Falls would result in a net gain area of 34,860 compared with a net loss area of 13,801. The Commission was concerned that within the loss area, there would be a gray area containing 35 persons, however, the third and final factor in the decision was the proposed new allotment of Channel 242A to Llano. The new allotment to Llano would, at the reference coordinates, greatly reduce the gray area and at revised coordinates, completely eliminate the gray area. The Commission stated:

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7. In this case, College Park is nearly eight times the population of Social Circle, making the case for preferring College Park over Social Circle even more compelling.

In as much as the Channel 242A allotment at Llano is the direct result of reallocating Channel 285C3 to Marble Falls, our action in this proceeding will result in both Llano and Marble Falls having first local services. In a related context, we note that a Channel 242A allotment at Llano will serve 9,735 persons in an area of 2,450 kilometers. This reduces the loss of service resulting from the reallocation of Channel 285C3 to Marble Falls.

Llano at 6812. These three factors, plus the licensee's commitment to apply for and construct the new Llano allotment at Channel 242A were sufficient for the Commission to prefer the reallocation to Marble Falls with a new allotment to Llano over retaining first local service at Llano.

12. The public interest factors favoring adoption of the WNNX proposal are even more compelling than in the *Llano* case. The city of College Park is nearly eight times the size of the competing city of Social Circle. The net service area gain from adopting the WNNX proposal would be 1,691,114, while the net gain in service if the Social Circle proposal were adopted would be less than 10% of that amount. Adopting the WNNX proposal would also completely eliminate a grandfathered short-spacing with a Cleveland, Tennessee station and a smaller short spacing to a Tuscumbia, Alabama station.

13. Even without the proposed replacement allotment, the city of Anniston would still be served by four local radio stations.<sup>8</sup> The additional allotment of Channel 264A to Ashland, Alabama as that community's first competitive service to WASZ, which operates in Channel 238A at Ashland, is another public interest benefit supporting grant of the WNNX proposal.

14. The small gray area the WNNX proposal creates would be eliminated by the proposed new allotment to Anniston. WNNX has represented that it would apply for, and then construct and operate the new channel at Anniston should it receive Commission authorization to do so, therefore,

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8. The four stations are WGRW, 90.7 MHz; WHMA, 1390 kHz; WDNG, 1450 kHz and WANA, 1490 kHz.

no weight should be given to the gray area issue. *Llano, supra*. As the *Llano* case demonstrates, the mere creation of an area that receives less than five (but not less than two) services should not be sufficient in and of itself to derail a reallocation proposal. It is just one factor in a balancing of the various public interest factors to be considered under Priority 4. In this case, the area where persons will receive less than five services under the WNNX proposal is not sufficient to outweigh the benefits that will accrue from adopting that proposal.

### **CONCLUSION**

15. To decide which of the two competing proposals would present the more preferential arrangement of allotments, other public interest factors must be examined (Priority 4). WNNX has demonstrated its comparative superiority under Priority 4 to support adoption of its proposal

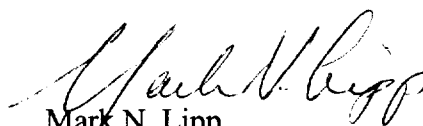
16. Small's proposal would provide a first local service to Social Circle, a community of 2,755. The net service gain area if Small's proposal is adopted would be 136,523. While providing first local service to Social Circle, it would be removing the second local service (first competitive service) from Milledgeville, which has a larger population.

17. WNNX's proposal would provide first local service to College Park, a community of 20,457. The net service gain from the WNNX proposal would be 1,691,114. The WNNX proposal would remove a fifth local service from Anniston, but to ameliorate the impact of that loss of service, WNNX has proposed new allotments to Anniston and Ashland. In addition, the WNNX proposal would resolve two short spacings, one that is in excess of 57 kilometers. The creation of areas that will receive less than five aural services has not, under these circumstances, been demonstrated to be decisive. On balance, the WNNX proposal is clearly preferred because of the tremendous public interest benefits that would be realized.

18. Accordingly, WNNX urges the Commission to grant the reallocation of Channel 263 from Anniston, Alabama to College Park, Georgia and modify Station WHMA's license accordingly.

Respectfully submitted,

**WNNX LICENSE INVESTMENT CO.**

A handwritten signature in cursive script, appearing to read "Mark N. Lipp".

Mark N. Lipp

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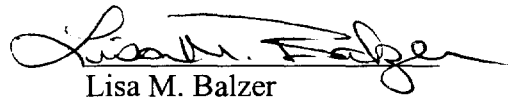
Dated: November 18, 1998



## **CERTIFICATE OF SERVICE**

I, Lisa M. Balzer, do hereby certify that on this 18th day of November, 1998, I have hand delivered or mailed the foregoing "Reply Comments" to the following:

- |   |   |  |   |
|---|---|--|---|
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Lisa M. Balzer

- \* Hand Delivered